

June 16, 2025

VIA ECF

Clifton Cislak
Clerk of Court U.S. Court of Appeals for
the D.C. Circuit
333 Constitution Avenue, N.W.
Washington, D.C. 20001

Re: *Global Health Council v. Trump*, No. 25-5097
AIDS Vaccine Advocacy Coalition v. Dep't of State, No. 25-5098

Dear Mr. Cislak:

Pursuant to Appellate Rule 28(j), Plaintiffs-Appellees notify the Court that counsel have identified additional provisions of the Further Consolidated Appropriations Act, 2024, Pub. L. No. 118-47, pertinent to this appeal. Plaintiffs' counsel had not previously identified these provisions because, atypically, they appear in "General Provisions" that conclude Division F, 138 Stat. at 771-72, rather than in the titles appropriating funds, *e.g.*, *id.* at 740-47.

A central premise of Defendants' appellate argument is that the Act's foreign-assistance appropriations do not, "on their own," compel Defendants to spend the full amounts appropriated. Defs. Br. 35-40. Defendants assert that there was no "unequivocal command in the text of the appropriations statutes"—such as a "shall" command—"to make all of the appropriated sums available." *Id.* at 37-39. Plaintiffs' brief (at 32-44) explained why Defendants' position contravenes settled principles of appropriations law.

The Act, however, *does* contain the "shall" commands that Defendants say are necessary. Specifically, Section 7019(a) of Division F directs that "funds appropriated by this Act [for foreign assistance] *shall be made available in the amounts specifically designated* in the respective tables included in the explanatory statement" appended to the Act. Ex. A (emphasis added). Those tables specify how much must be spent on dozens of specific programs, totaling some \$14 billion. *See* Ex. B at 1170-74. Section 7019(b) provides that Defendants "may only deviate up to 10 percent from the amounts specifically designated in the respective tables," subject to conditions and exceptions.¹ That limited authority to deviate does not apply to global health programs. *See* Sec. 7019(d)(2). Later sections of the General Provisions such as Sections 7032, 7059, 7060, and 7061 further mandate that, "of the amounts appropriated" for foreign assistance, "not less than" specified dollar

¹ Prior appropriations acts contain the same provisions.

amounts “*shall be made available*” for specified purposes like clean energy and education, among others.

Defendants have conceded that statutory language stating that funds “shall be made available” sets forth a requirement that Defendants obligate the funds. Defs. Br. 40.

Sincerely,

/s/Lauren E. Bateman

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